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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,045	09/26/2003	Stephen J. Brown	03-0940 / 7553.00038	8048
66683 7590 08/31/2010 HEALTH HERO NETWORK, INC. 2400 GENG ROAD, SUITE 200 PALO ALTO, CA 94303				
EXAMINER				
HU, KANG				
ART UNIT		PAPER NUMBER		
3715				
MAIL DATE		DELIVERY MODE		
08/31/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/673,045

Applicant(s)

BROWN ET AL.

Examiner

KANG HU

Art Unit

3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48, 50-52, 55-62, 64, 65, 68-79, 81-84 and 96-122 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48, 50-52, 55-62, 64, 65, 68-79, 81-84 and 96-122 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 and 17 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/29/2010 has been entered. Claims 1-47, 49, 53, 54, 63, 66, 67, 80, 85-95 were previously cancelled, Claims 48, 50-52, 55-62, 64, 65, 68-79, 81-84 and 96-122 are currently pending in the application.

Priority

It is noted that the applicant has requested that the priority objection be held in abeyance until the claims are found to be allowable. The examiner's objection to the priority can be found in the previous office action 3/31/2010 and is incorporated herein by reference.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 48, 50-52, 55-62, 64, 65, 68-79, 81-84 and 96-122 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bro (US 5,722,418) in view of Kashkashian (US 4,700,055) and further in view of Schulman et al. (US 5,497,772).

Re claims 48, 51, 62, 75, 81 and 122, Bro teaches a blood glucose monitoring system for monitoring a blood glucose level and for providing health-related information comprising: a display device including a display screen which displays the blood glucose level as measured (col 14, lines 35-38, blood sugar or blood pressure ... measuring and recording device; col 17, lines 15-25, two way interactive message display), an audio speaker (col 17, line 35, built in speaker) a processor configured to provide audio and visual signals to the audio speaker and the display device respectively (col 17, lines 15-25, use of a two-way interactive message display connected directly to the computer via the telephone network and digital telephone tone signal converter); at least one built-in memory including read-only digital memory or writeable digital memory, having stored therein operation data and operation software routines (col 15, line 58-61, patient program); software for controlling the blood glucose monitoring system (col 14, lines 35-40, blood sugar measuring and recording device; col 18, lines 58-67, allow observer or instructor using computer to review the patient's blood glucose through the user of computer which is at a remote location and guide the patient from time to time based upon the trend; col 38, lines 1-15, personalized interactive patient care);

comparing the blood glucose level as measured with stored measurements (col 14, lines 50-56, previous history of messages received; col 18, lines 58-67, allow instructor to monitor and guide the patient based upon the trend);
performing one or more further processing functions in response to the comparing (col 14, lines 60-67, program including many motivational and reinforcement messages);

Bro further teaches having the interactive two way message display establishes communication with a remotely located computer via a communication network based on a network address (col 17, lines 10-15, patient response can be made by calling the computer by use of a special computer access telephone number; col 18, lines 14-38, asynchronous transfer mode uses general class of digital packet switching technologies that relay and route traffic by means of an address contained within a very short, fixed-length packet) and verification of patient identity through a personal identification number and/or credit card); However Bro does not provide that the network address is received from a removable memory card attached to the system. Kashkashian teaches of providing a credit card and a credit card reader (Kashkashian, Fig 1) connected to the console and microprocessor, Kashkashian further teaches of providing different data pertaining to the customer encoded onto the card (Kashkashian, col 6, line 63- col 7, line 10). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bro by Kashkashian to provide network address to be stored on the credit card (removable memory card) to save space and maximizing convenience and to provide easy accessibility, by merely substitute one element for another known in the field, to yield a predictable result.

Bro further teaches of receiving the health-related information via the communication network from the remotely located computer (Bro, col 9, lines 55-61, questions regarding health); at least one physiological data monitor configured to provide a measurement signal representative of a physiological parameter of a user and reside outside a first housing containing said processor (Fig 1, physiological data monitor and interactive two-way message display being two separate devices; col 14, lines 35-41, physiological data monitor being one of EEG or blood sugar, blood pressure, heart monitor etc.);

Bro teaches of an interface device coupled between the processor and the physiological data monitor (fig 1, client device interactive device connected to a physiological data monitor), however Bro does not teach of having the interface device used to provide electrical isolation and not entirely disposed within any housing containing the processor. Schulman teaches of having detachable connector that does not use a direct electrical contact (a "contact-less" connector) between the circuits of the monitor and the plurality of sensors to provide electrical isolation between the glucose monitor and the sensors (col 11, lines 27-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Bro by Schulman to provide contact-less interface devices to provide electrical isolation and not disposed within any housing containing the processor by merely substitute one element for another known in the field, to yield a predictable result. Furthermore, Schulman and Bro are in the same field of endeavor of providing physiological data monitoring.

Bro further teaches of an input device in communication with the processor and configured to receive an input from the user; enable the user to make selections and control one or more user functions of the blood glucose monitoring system (interactive two way message display receives input from the user in response to queries sent by the remote computer; the user makes selection on the blood glucose monitor to allow the monitor to take measurement); and provide a control signal to the processor based upon the input, thereby to cause the health related information to be provided to the user based upon the measurement signal representative of the blood glucose level and the control signal (col 18, lines 44-57 and col 28, lines 1-12, patient program is provided to the user based on the measured physiological information and user response to the queries). Bro implicitly teaches of having blood glucose level and blood glucose indicator by having the blood glucose monitor provide measured result and indication to the doctor at the remote location. Schulman explicitly teaches of having blood glucose level and blood glucose indicators (Schulman, col 11, lines 14-20 and col 16, lines 1-6). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Schulman to Bro to provide blood glucose level and blood glucose indicators to allow the doctor to easily identify the physiological condition of the patient.

Re claims 50, 64, 79 and 84, a signal receiver for receiving the measurement signal representative of the blood glucose level from at least one physiological data monitor (Schulman, col 11, lines 14-40);
converter for converting the measurement signal as received into a form acceptable to the processor (provide glucose level information to the processor)

Art Unit: 3715

and a processor controller for controlling the processor (interactive two way messaging display receives signals from remote computers and sends patient data to the remote computer).

Re claims 52 and 65, the interface device utilizes optical isolation (Schulman, col 12, line 40, optical coupling can also be used).

Re claims 55 and 68, the input device is hand-held (Bro, col 57, line 35, hand-held personal communicator).

Re claims 56 and 69, the input device received the input from the user through at least one push button switch (Bro, col 33, line 53).

Re claims 57, 70, 98, 102, 106, 110 and 114, the health related information provided from the remotely located computer to the user includes moving images displayed on the display screen (interactive video).

Re claims 58 and 71, the health related information provided from the remotely located computer to the user further includes a comparison of measurements of the blood glucose level with previously stored measurement of the blood glucose level (Bro, col 11, lines 20-53, intended use of the system to monitor patient's health; col 14, lines 35-40, blood sugar monitor; col 23, line 48-63, custom tailor reinforcement for compliance to the patient's response profile).

Re claims 59 and 72, the health related information provided from the remotely located to the user includes educational information (Bro, col 58, line 18).

Re claims 60 and 73, blood glucose monitoring system is configured to store particular information on at least one built-in memory for later retrieval (saving on the interactive computer or television system).

Re claims 61, 74 and 77, the display device is a television (Bro, col 20, line 7).

Re claims 76 and 82, the processor comprises a video game console (applicant admitted prior art, office action 9/1/2009) It would have been obvious to one of ordinary skill in the art at the time of the invention to use a game console as the processor to provide more entertainment.

Re claims 78, 83, 97, 101, 105, 109 and 113, CD-ROM drive, and interchangeable compact disk removably coupled to the CD-ROM drive for providing additional functionality to the processor (Bro, col 14, lines 45-55; col 15, line 60).

Re claims 96, 100, 104, 108 and 112, one or more communication ports configured to connect the blood glucose monitoring system to an information superhighway (Bro, col 18, lines 44-67, glucose monitor connected to a network).

Re claims 99, 103, 107, 111, 115 and 116, built-in memory has stored therein alarm data and alarm software routines for triggering an alarm if the blood glucose level as measure falls outside a predetermined range (Bro, col 55, line 30-40, reminder regarding compliance).

Re claims 117 and 118, operational data and the operational software routines are configured to store particular information to support later retrieval or download based on the comparing (Bro, col 32, lines 35-40, record messages for later retrieval).

Re claim 119, operational data and the operation software routines are configured to ask questions of the user based on the comparing (Bro, col 57, lines 55-60).

Re claim 120, give advice as to diet or exercise habits (Bro, col 11, lines 20-50).

Re claim 121, wireless input device (Bro, col 20, lines 20-21, wireless transmission)

Terminal Disclaimer

4. The terminal disclaimer filed on 5/28/2010 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of united states patent no. 5,601,435 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

The claim object of claims 96, 100, 104, 108 and 112 are withdrawn because of amendments made with respect to each of the claims.

Applicant's arguments with respect to newly amended features have been addressed in the rejection above and are not repeated herein.

Applicant has further made arguments with respect to previously presented claim limitations. The examiner has provided detailed clarification with respect to each argument in the rejection above and also not repeated herein.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KANG HU whose telephone number is (571)270-1344. The examiner can normally be reached on 8-5 (Mon-Thu).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-262-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kang Hu/
Examiner, Art Unit 3715